and were reasonably described as such. People who buy without sample, warranty or proper description have no one to blame but themselves — *caveat emptor!* There will be judgment for the plaintiff firm for $3,696 and costs.

Judgment for the plaintiffs.

MOHAMED ALI BIN OSMAN v. REGINA.

[A. Cr. J. (Buhagiar, J.) September 14, 1953]

[Penang — Criminal Appeal No. 28 of 1953]

Vagrancy Ordinance, 1939, s. 3(1) — Selling cinema tickets without a licence outside booking office — "Hawker" — Definition of.

The appellant was convicted and sentenced on a charge of hawking under section 3(1) of the Vagrancy Ordinance, 1939. The evidence for the prosecution showed that appellant was selling cinema tickets outside the first class booking office of the Windsor Theatre, Penang. One of the grounds of appeal was that the facts as alleged against the appellant did not constitute the offence in the charge. Section 3(1) of the Vagrancy Ordinance reads as follows: "Every hawker wandering abroad and trading without being duly licensed or otherwise authorised by law;.....shall be deemed to be an idle and disorderly person within the meaning of this Ordinance and shall be liable, etc....."

Held: Section 3(1) of the Vagrancy Ordinance, 1939, did not cover the facts as alleged against the appellant.

The legislature did not intend to make, or had in fact made any change by using the word "hawker" in section 3(1) of the Vagrancy Ordinance, 1939, instead of the words "petty chapman or pedlar" used in the Imperial Vagrancy Act, and.....that provision was not intended to apply and does not apply to any person who does a single act of street trading; it does not apply to any person who hawks goods without a licence; it applies to persons who are hawkers i.e. persons carrying their goods from town to town, from house to house or from place to place and who offer their goods for sale without a licence or other authority.

Cases referred to:—

(1) *Druce v. Gabb* (1858) 31 L.T.O.S. 98; 37 E. & E. Digest 361 para 1630.

(2) *Morrill v. State* 38 Wis. 437.

(3) *R. (Best) v. Veniot* (1939), 14 M.P.R. 27.

(4) *Nicholson v. Olds* (1891), 9 N.Z.L.R. 308.

(5) *Mathers v. Penfold* (1915) 1 K.B. 514.

(6) *Pointon v. Hill* (1884) 2 Q.B.D. 306.

CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

J. D. Peterkin (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Buhagiar, J.: — This is an appeal against conviction and sentence imposed by the learned Magistrate at George Town, Penang. The charge against the appellant was as follows:—

"That you on 29.7.53 at 8.20 p.m. at the Windsor Theatre, Maxwell Road, Penang did hawk cinema tickets without a licence outside the booking office of the said theatre and that you have thereby committed an offence under section 3(1) of the Vagrancy Ordinance 37/39."

The evidence for the prosecution shows that the appellant was selling cinema tickets outside the first class booking office of the Windsor Theatre, Penang. One of the grounds of appeal is that the facts as alleged against the appellant do not constitute the offence in the charge.

Section 3(1) of the Vagrancy Ordinance, 1939 (S.S. No. 37 of 1939) runs as follows:—

"3(1). Every hawker wandering abroad and trading without being duly licensed or otherwise authorised by law;

shall be deemed to be an idle and disorderly person within the meaning of this Ordinance and shall be liable, etc."

Counsel for the appellant submitted that to substantiate the charge the prosecution had to prove:—

(a) that the appellant was a hawker;

(b) that the appellant was wandering abroad;

(c) that he was trading; and

(d) that a licence was necessary to sell cinema tickets.

The source of the abovementioned provision is to be found in section 3 of the Imperial Vagrancy Act, 1824, under which "every petty chapman or pedlar wandering abroad, and trading without being duly licensed or otherwise authorised by law" is deemed to be an idle and disorderly person. As the short title indicates and as the context of the whole Act shows, that Act is intended to apply to "vagrants". *Blackstone*, writing of vagrants (4 Bl. Com. 170), calls them idle persons and vagabonds, and says that ancient statutes described them as being "such as wake on the night and sleep on the day, and haunt customable taverns and alehouses, and routs about; and no man wot from whence they come, ne whither they go."

"Petty Chapman" and "pedlar" are not defined; it is clear from the context and from the general meaning of the word "pedlar", and all English cases on the point clearly indicate, that section 3 of the Vagrancy Act does not apply to persons occupying a stationary position in the street to sell their goods and not going either from house to house or from town to town — see *Druce v. Gabb*[1]:—

"A man who hawks about goods from house to house and barters them for other goods, though he takes no payment in money, is, if he has no licence as a hawker, under 50 Geo. 3, c.41, section 6, a petty chapman or a pedlar under the Vagrancy Act, 1824 (c.83) section 3 and is liable to be convicted as a vagrant under the Vagrancy Act, 1824, (c.83) section 3."

"Hawker" is not defined in the Vagrancy Ordinance, 1939, but for the purposes of this Ordinance, I do not consider that there is any fundamental

difference between that word and the word "pedlar" used in the Vagrancy Act, 1824. In the *Concise Oxford Dictionary* "hawker" is given the meaning of "one who hawks goods" and "hawk" means "carry (goods) about for sale". In *Chambers' Twentieth Century Dictionary* "hawker" is given the meaning of "one who goes about offering the goods for sale; now confined to one who uses a beast of burden or vehicle (as distinguished from a pedlar, who carries his wares bodily)". In *Stroud's Judicial Dictionary*, 3rd edition under the heading "Hawk: Hawker" there is the following definition: "'Hawkers' be a sort of deceitful fellows that go from place to place buying and selling brass, pewter, and other merchandize, that ought to be uttered in open market (Cowel, cited *Morrill v. State*[2])". "Hawker" and "pedlar" have been the subject of interpretation in a Canadian case and in a New Zealand case — see *Words and Phrases Judicially Defined* under "Hawker": in the Canadian Case *R. (Best) v. Veniot*[3] Graham, J. at p. 31 said:—

"A 'hawker' is technically one who carries his goods from a wagon or other vehicle. The word 'pedlar' may have originally designated one who went on foot with a pack; but in this country the words 'hawker' and 'pedlar' are generally considered equivalent in law."

In the New Zealand case, *Nicholson v. Olds*[4] Williams, J., at p. 312 said:—

"The definition of a 'hawker' given in Burn's Justice is, 'an itinerant trader who goes about from place to place carrying with him and selling wares'. A pedlar is defined as 'a hawker in small wares'. There is thus no very precise line drawn between the terms 'hawker' and 'pedlar', and it seems to me that the power conferred upon the Council by the subsection is to draw this line, and not to give an entirely new meaning to well-known English words."

I do not consider that the legislature intended to make, or has in fact made any change by using the word "hawker" in section 3(1) of the Vagrancy, 1939, instead of the words "petty chapman or pedlar" used in the Imperial Act, and I am of opinion that that provision was not intended to apply and does not apply to any person who does a single act of street trading; it does not apply to any person who hawks goods without a licence; it applies to persons who are hawkers i.e. persons carrying their goods from town to town, from house to house or from place to place and who offer their goods for sale without a licence or other authority. With regard to the phrase "wandering abroad" used in the said sub-section, the fact that the appellant was at one particular place when he was selling tickets does not necessarily mean that he was not "wandering abroad" for the purposes of that provision. Thus in *Mathers v. Penfold*[5] Darling, J., at pp. 519-521 said:—

"The words of the Statute (i.e. the Vagrancy Act, 1824), are obviously aimed at persons.....who are wandering abroad, who are placing themselves at the corners of streets and begging or soliciting alms, such persons as are described in the judgment of Cave, J., in **Pointon v. Hill**[6].....as having given up work, and adopted begging as a habit or mode of life. Those persons are clearly, I think, within the statute."

There is no evidence whatever that the appellant was a "hawker" for the purposes of sub-section (1) of section 3 of the Vagrancy Ordinance, 1939.

In view of the above it is not necessary for me to decide whether cinema tickets are goods and whether the selling of such tickets amounts to trading, for the purposes of that section, or whether a licence is required for the selling of such tickets. Section 3(1) of the Vagrancy Ordinance, 1939, does not cover the facts as alleged against the appellant.

I, therefore, allow the appeal and set side the conviction and sentence of the Court below.

Appeal allowed.

Re LEE KIAN SOO, AN ARCHITECT.

[A. C. J. (Brown, J.) December 10, 1952]

[Singapore — Originating Motion No. 47 of 1952]

Architects Ordinance, 1941, s. 8 — Professional fee charged less than scale prescribed — Failure by architect to exercise adequate supervision — Order of Board of Architects to strike name off Register — Appeal from — Invalidity of Bye-law 13(14) of the Architects Bye-laws, 1941 — Procedure.

This was an appeal by way of Originating Motion to set aside the Order of the Board of Architects directing that the appellant's name be struck off the Register. The appellant was a registered architect under the provisions of the Architects Ordinance, 1941, and substantially the case against him was that he had charged fees less than the scale of fees fixed by the Board of Architects and had failed to exercise adequate supervision of the building in question. There were a number of grounds argued on the appeal all of which are set out and dealt with fully in the judgment. For the appellant it was contended, inter alia, that Bye-law 13 (14) of the Architects Bye-laws, 1941 (which deems it to be infamous conduct under section 8 of the Architects Ordinance, 1941, "to deviate from by charging less than the scale of fees authorised by the Board of Architects except with the consent of the Board in writing") is invalid as being repugnant to section 8(1) of the Ordinance and therefore ultra vires and void.

Held: Bye-law 13 is invalid by reason of the words "and shall be deemed to be conduct which is infamous in a professional respect under section 8". These words purport to take away from the Board a duty with which the legislature has entrusted them in a disciplinary case; and they purport to deprive an architect of the right not to have his conduct stigmatised as "infamous" except by the judgment of his professional colleagues after a full consideration of the facts.

On the question of what is the duty to supervise which an architect owes to his client when the client is an owner-builder,

Held: an architect's duty to an owner-builder is to perform the work which it has been mutually agreed that he should do, i.e. his duty to his client is governed by his contract.

Held also: the correct procedure for appealing to the High Court under the provisions of section 8(3) of